



September 2, 2004

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ex parte submission

Re: Review of the Section 251 Unbundling Obligations of Incumbent
Local Exchange Carriers – CC Docket No. 01-338.

Dear Ms. Dortch:

On September 1, 2004, the undersigned and Susan Gately, Senior Vice-President of Economics and Technology, Inc. ("ETI"), on behalf of the Ad Hoc Telecommunications Users Committee, met with Jeremy Miller, Assistant Division Chief, Russell Hanser, Senior Attorney, Ian Dillner, Attorney Advisor, Marcus Maher, Attorney Advisor, all of the Competition Policy Division, and Cathy Zima, Acting Deputy Division Chief of the Industry Analysis and Technology Division, to discuss the white paper entitled *Competition in Access Markets: Reality or Illusion* prepared by ETI and filed as an *ex parte* in the above referenced proceeding on August 26, 2004.

We discussed the contents of the white paper, focusing on the unreasonably high prices and astonishingly high rates of return earned by incumbent local exchange carriers ("ILECs") for special access services and the paper's conclusion that markets for access service are not competitive. The parties also discussed two slides, attached hereto, which describe (i) the dramatic upward pricing trend for ten-mile DS-1s provided by Qwest; and (ii) the relatively small number of buildings in the City of San Francisco to which competitive local exchange carriers ("CLECs") can connect using their own facilities compared to buildings in San Francisco for which CLECs must rely on special access services obtained from incumbent local exchange carriers.

In addition, the parties discussed recent statements by SBC to the press in which SBC challenged the paper's conclusions and blamed the ILECs' high



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rates of return on FCC cost accounting rules. ETI explained that SBC's press statements were disingenuous, at best, for three reasons.

First, ETI explained that the white paper relied upon data provided by the carriers' themselves through the FCC's Automated Reporting Management Information System ("ARMIS"). In proceedings before regulators other than the FCC, SBC advocates the use of these very data to calculate carrier costs and insists that the data are both reliable and valid for this purpose. As an example, ETI identified SBC's January 20, 2004 submission of testimony from its expert witness, Dr. Debra J. Aron, to the Illinois Commerce Commission in which Dr. Aron defended the use of ARMIS data as "well suited" for determining actual carrier costs in order to set the prices for unbundled network elements ("UNEs"). In that case, however, SBC relied on ARMIS data to justify price *increases* for UNEs. When the same data exposes excessively high prices for special access and justifies significant *decreases*, SBC argues that it is unreliable.

Second, the minor cost allocation quibbles of SBC would not change the validity of the pricing trends critiqued in the paper. Whether or not the particular rates of returns exposed by ARMIS data could be adjusted up or down by a few points based on refinements at the margins, such changes would apply across the time period under study. Thus, the data would still demonstrate the BOCs' ability to impose steep and steady price increases on special access users, without fear of attracting competitive entry.

Finally, ARMIS simply reflects costing and accounting rules that the FCC has implemented over several decades with the active participation of the ILECs. Because of the active, central role played by the ILECs in the development of those rules, and their long-standing reliance on them in a variety of regulatory settings, any sudden disclaimer of those rules by the ILECs can only be viewed skeptically.



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Pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), copies of this letter and attachments are being filed with the Office of the Secretary.

Sincerely,

A handwritten signature in black ink that reads 'Colleen Boothby'. The signature is fluid and cursive, with the first name 'Colleen' and last name 'Boothby' clearly distinguishable.

Colleen Boothby

Counsel for
Ad Hoc Telecommunications Users
Committee

Attachments

cc (via email): Jeremy Miller
Russell Hanser
Ian Dillner
Marcus Maher
Cathy Zima